

I BACKGROUND OF CHARTER ISSUES WITH CITIZEN INITIATIVE MEASURES

Regarding the Charter sections governing Citizen Initiatives and Referenda, the current text printed in the charter is not consistent with City Council Order No. FY 17-028 (Citizen Initiative Measures) and Order No. FY 17-029 (Citizen Referendum Procedures), which were unanimously adopted on August 17, 2016. The Citizen Referendum Procedures, Order No. 17-028, was filed in the legislature as H. 4784, which correctly transcribed the City Council order—but the language was altered—apparently by unelected employees working within the Senate Counsel's office—to produce an incoherent text for section 7-8(a) of the Charter.

The first paragraph of both the original language passed by the City Council, versus the language that was transcribed into Chapter 410 of the Acts of 2016, are shown below for comparison:

Section 7-8: CITIZEN REFERENDUM PROCEDURES AS ADOPTED BY THE CITY COUNCIL ON AUGUST 17, 2016, AND AS INCLUDED IN H. 4784:

- a) *Petition, Effect on Final Vote:* If, within thirty (30) days following the date on which the **Town Council** or the School Committee **has voted finally to approve of any measure a petition** signed by a number of voters equal to ten percent (10%) of the total number of voters voting in the most recent regular biennial Town election, but no less than two and one half percent (2 ½%) of all registered voters as of the same date, and addressed to the Town Council or to the School Committee as may be, **protesting against the measure** or any part thereof is filed with the Town Clerk the effective date of such measure shall be temporarily suspended. Final approval under this section shall not be complete until the time for all remedies under section 3-7 are expired. The School Committee or the Town Council shall forthwith reconsider its vote on such **measure** or part thereof, and, if such **measure** is not rescinded the Town Council shall provide for the submission of the question for a determination by the voters either at a special election which it may call at its convenience, or within such time as may be requested by the School Committee, or at the next regular Town election, but pending such submission and determination the effect of such **measure** shall continue to be suspended.

(emphasis supplied)

Section 7-8: CITIZEN REFERENDUM PROCEDURES AS ADOPTED IN CHAPTER 410 OF THE ACTS OF THE ACTS OF 2016 SIGNED ON JANUARY 3, 2017:

- a) *Petition, Effect on Final Vote -* If, not later than thirty (30) days after the date on which the **Town Council** or the School Committee **has voted to approve a petition** which was addressed to the Town Council or to the School Committee and signed by a number of voters equal to ten percent of the total number of voters voting in the most recent regular biennial Town election, but not less than 2 ½ % of all registered voters as of the same date, the **petition** is filed with the Town Clerk, **protesting against the measure** or any part thereof then the effective date of such **measure** shall be temporarily suspended. Final approval under this section shall not be complete until the time for all remedies pursuant to Section 3-7 has expired. The School Committee or the Town Council **shall reconsider its vote on the measure** or any part thereof at the next regularly scheduled meeting of that body and, if the **measure** is not rescinded the Town Council, shall provide for the submission of the question for a determination by the voters either at a special election which it may call at its convenience, or within such time as may be requested by the School Committee, or at the next regular Town election; provided, however, that pending such submission and determination, the effect of the **measure** shall continue to be suspended.

(emphasis added)

The second version as adopted by the General Court, is not only inconsistent with what the City Council adopted, but the process and its intent have become become confused and disjointed.

For example: what do the words “the measure” refer to here:

“If, not later than thirty (30) days after the date on which the **Town Council** or the **School Committee has voted to approve a petition** ...the **petition** is filed with the Town Clerk, **protesting against the measure** or any part thereof then the effective date of such **measure** shall be temporarily suspended.

The process above begins with the City Council voting on a **petition**, which 30 days later is submitted to the City Clerk. This makes no sense. It is the Town Clerk who first reviews the petition, which formerly was presented to the Clerk within 30 days after a **measure** has been passed by the City Council. But in Ch.410, the **vote** of the City Council “**to approve of any measure**” has been deleted. Now the vote of the Council refers to “**to approve a petition,**” which throws the whole process into confusion. (emphasis added)

The other major problem with section **7-8(a)** as it exists now is that it makes little sense when combined with the provisions of section **7-8(b)**, which in turn links to several parts of section **7-7** which are to apply to citizen referenda. I will not delve into those problems here, but several referenda recently submitted under section **7-8(b)** of the Charter were rejected by the City Attorney who relied on section **7-8(a)**. The fact that two avenues exist to file a referendum has led to much unnecessary confusion. In April, 14 residents commenced two zoning referendum petitions under section 7-8(b), which were rejected citing 7-8(a). A similar library petition commenced under section 7-8(b) by more than 10 voters was also rejected.

The best course, in my opinion, is to rewrite sections 7-7 and 7-8 of the Charter so that citizens can use these two petition processes to clearly and in an understandable way submit either an initiative or a referendum when they wish to write a new ordinance or protest a vote of the City Council.

II. PROPOSAL TO REDRAFT SECTIONS 7-7 AND 7-8 OF THE GREENFIELD CHARTER

SECTION 7-7: CITIZEN INITIATIVE MEASURES

(a) Commencement - Initiative procedures shall be started by the filing of a proposed initiative petition with the City Clerk. The petition shall be addressed to the City Council or to the School Committee, shall contain a request for the passage of a particular measure which shall be set forth in full in the petition, and shall be signed by not less than ten (10) voters of the City. The petition shall be accompanied by an affidavit signed by five (5) voters and containing their residential address, stating they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form and shall indicate which member shall serve as clerk of the petitioners committee.

(b) *Referral to City Attorney* - The City Clerk shall, following receipt of each such proposed petition, deliver a copy of the petition to the City Attorney. The City Attorney shall, not later than ten working days after receipt of a copy of the petition, in writing, advise the City Council or the School Committee, as may be appropriate, whether: (1) the measure as proposed may lawfully be proposed by the initiative process; (2) whether, in its present form it may be lawfully adopted by the Town Council or the School Committee; and (3) whether the City Clerk shall issue blank forms as provided pursuant paragraph 7-7 (c). If the opinion of the City Attorney is that the measure fails in any respect, the reply shall state the reasons for that opinion, in full. A

copy of the opinion of the City Attorney shall also be mailed to the person designated as clerk of the petitioners committee.

(c) *Submission to City Clerk* - If the opinion of the City Attorney is that the petition is eligible pursuant to Section 7-7 (b), the City Clerk shall provide blank forms for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed measure, as determined by the City Attorney, together with the names and addresses of the first ten (10) voters who signed the originating petition. No later than forty-five (45) days following the date the blank forms are issued by the City Clerk, the petitions shall be returned and filed with the City Clerk signed by not less than two and a half percent (2.5%) of all registered voters as of the most recent biennial City election. Signatures to an initiative petition need not all be on one (1) paper, but all such papers pertaining to a measure shall be fastened together and filed as a single instrument, with the endorsement thereon of the name and residence address of the person designated as filing the same. With each signature on the petition there shall also appear the street and number of the residence of each signer.

Not later than ten (10) days after the filing of the petition, the Board of Registrars of Voters shall ascertain by what number of voters the petition has been signed, and what percentage that number is of the total number of registered voters as of the date of the most recent biennial City election. The City Clerk shall attach to the petition a certificate showing the results of the City Clerk's examination and shall return the petition to the Clerk of the Council or the secretary of the School Committee according to how the petition is addressed. A copy of the Board of Registrars of Voters certificate shall also be mailed to the person designated as Clerk of the petitioners committee.

(d) *Action on Petitions* – Not later than thirty (30) days after the date a petition is returned to the Clerk of the Council or the secretary of the School Committee by the City Clerk, and after publication in accordance with section 2-9(c), City Council or the School Committee shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure or by rejecting it. The passage of a measure which is in lieu of an initiative measure shall be considered a rejection of the initiative measure. If the City Council or the School Committee fails to act with respect to any initiative measure which is presented to it not later than thirty (30) days after the date it is returned to it by the City Clerk, the measure shall be considered to have been rejected on the 30th day. If an initiative measure is rejected, the City Clerk shall promptly give notice of that fact by certified mail to the person designated as Clerk of the petitioners committee.

(e) *Determination by the Voters* – If an initiative petition is rejected, and the City Clerk has certified that a sufficient number of voters have signed the initiative petition, the City Council shall submit the proposed measure, without alteration, to the voters for determination at the next regular biennial city election, or at a special election; provided, however, that if the next regular biennial City election is to be held not later than one (1) year after the date of the certificate, the City Council may omit the calling of a special election and cause the question to appear on the election ballot at the approaching election for determination by the voters at that election.

(f) *Publication* - The full text of any initiative measure which is submitted to the voters shall be published in a local newspaper not less than seven (7) nor more than fourteen (14) days preceding the date of the election at which such question is to be voted upon. Additional

copies of the full text shall be available for distribution to the public in the office of the City Clerk.

(g) *Form of Question* - The ballots used when voting on a measure proposed by the voters under this section shall contain a question in substantially the following form:

Shall the following measure, which was proposed by voters in an initiative petition, take effect?

(Here insert the full text of the proposed measure, or a fair, concise summary prepared by the petitioners committee, and approved by the Town Attorney)

_____ YES _____ NO

(h) *Time of Taking Effect* - If a majority of the votes cast on the question is in the affirmative, the measure shall be deemed to be effective forthwith, unless a later date is specified in such measure; provided, however, that no such measure shall be deemed to be adopted if fewer than twenty percent (20%) of the total number of registered voters as of the most recent biennial City election have voted at the election at which the question has been voted upon.

SECTION 7-8: CITIZEN REFERENDUM PROCEDURES

(a) *Petition Commencement, Effect on Final Vote* – If, within thirty (30) days following the date on which the City Council or the School Committee has voted finally to approve of any measure, a petition signed by not less than ten (10) voters of the City, and addressed to the City Council or to the School Committee, as may be, protesting against the measure or any part thereof is filed with the City Clerk, the effective date of such measure shall be temporarily suspended. The petition shall be accompanied by an affidavit signed by five (5) voters and containing their residential address, stating they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form and shall indicate which member shall serve as clerk of the petitioners committee.

(b) *Certain Initiative Provisions to Apply* - The petition described in this section shall be termed a “referendum petition” and subsections 7-7 (b) through (h) shall apply to the processing of such referendum petition, except that the words “measure or part thereof protested against” shall be deemed to replace the word “measure” in such subsections each time it appears, the word “referendum” shall be deemed to replace the word “initiative” in said subsections each time it appears, and the words “referendum petition” shall be deemed to replace the word “petition” in said subsections each time it appears.

(c) Final approval under this section of any referendum petition shall not be complete until the time for all remedies pursuant to Section 3-7 has expired; provided further, that pending submission of said referendum petition to the voters, and prior to final determination by said voters, the effect of the measure protested against shall continue to be suspended.